

1 Mayer Brown LLP
2 LEE H. RUBIN (SBN 141331)
3 lrubin@mayerbrown.com
4 EDWARD D. JOHNSON (SBN 189475)
5 wjohnson@mayerbrown.com
6 DONALD M. FALK (SBN 150256)
7 dfalk@mayerbrown.com
8 ANNE M. SELIN (SBN 270634)
9 aselin@mayerbrown.com
10 Two Palo Alto Square, Suite 300
11 3000 El Camino Real
12 Palo Alto, CA 94306-2112
13 Telephone: (650) 331-2000
14 Facsimile: (650) 331-2061

9 *Attorneys for Defendant
Google Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

14 IN RE: HIGH-TECH EMPLOYEE
15 ANTITRUST LITIGATION
16
THIS DOCUMENT RELATES TO
ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

1 Pursuant to Local Rule 7-11 and 79-5, Google Inc. hereby moves to seal redacted
 2 portions of Exhibit 3 to the Declaration of Lin Kahn, Supplement to the Expert Report of David
 3 Lewin, December 6, 2013, filed in support of Defendants' Joint Opposition to Plaintiffs' Motion
 4 to Exclude Expert Testimony Proffered by Defendants ("Joint Opposition"). A proposed
 5 redacted and highlighted version of Exhibit 3 is attached hereto.

6 The redacted information has been designated Confidential or Attorneys' Eyes Only
 7 under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). Google is
 8 concurrently filing the Declaration of Anne M. Selin in support of this sealing request.

9 **I. LEGAL STANDARD**

10 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial
 11 court to permit sealing of court documents for, *inter alia*, the protection of "a trade secret or other
 12 confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G).
 13 The Ninth Circuit has "carved out an exception to the presumption of access to judicial records
 14 for a sealed discovery document [attached] to a nondispositive motion," where the requesting
 15 party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No.
 16 C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana
 17 v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing'
 18 under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of
 19 sealed discovery material attached to nondispositive motions."); *see also Pintos v. Pacific
 20 Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009) ("In light of the weaker public interest in
 21 nondispositive materials, we apply the 'good cause' standard when parties wish to keep them
 22 under seal.").

23 **II. GOOD CAUSE EXISTS TO SEAL GOOGLE'S CONFIDENTIAL
 24 COMPENSATION INFORMATION**

25 The redacted portions of the exhibit identified above contains highly confidential and
 26 commercially sensitive information about Google's compensation for its employees. Google has
 27 designated the foregoing information "Confidential" or "Attorneys Eyes Only" under the
 28 Protective Order.

1 As the concurrently filed declaration demonstrates, Google keeps the sealed information
 2 confidential and the public disclosure of this information would cause Google harm by giving
 3 third-parties (including individuals responsible for competitive decision-making) insights into
 4 confidential and sensitive aspects of Google's compensation data and practices and competitive
 5 position, allowing these third-parties to potentially gain an unfair advantage in dealings with and
 6 against Google.

7 This type of information is regularly sealed because of its confidential and private nature.
 8 *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D. Cal. May 10, 2010) (granting a
 9 motion to seal records containing plaintiffs' salary information); *Nettles v. Farmers Ins. Exch.*,
 10 No. C06-5164, 2007 WL 858060, at *2, 2007 BL 247444 (W.D. Wash. Mar. 16, 2007) (holding
 11 that salary review notices for third parties "who have not chosen to have their salary history
 12 placed into the public record" could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-1043, 2010
 13 U.S. Dist. LEXIS 82526, at n.1, 2010 BL 187807 (W.D. Okla. Aug. 09, 2012) (noting that
 14 portions of summary judgment materials were filed under seal because they contained
 15 "confidential salary information"). Similarly, compensation policies, practices and decisions are
 16 routinely subject to a sealing order. *In re Wells Fargo Loan Processor Overtime Pay Litigation*,
 17 No. C 07-01841, at *16, 2008 U.S. Dist. LEXIS 53616, 2008 BL 123131 (N.D. Cal. June 09,
 18 2008) (noting that a "compensation policy" was filed under seal); *Hertz Equip. Rental Co. v.
 19 Useda*, No. CV-10-4953, 2010 BL 259718, at *2 (N.D. Cal. Nov. 02, 2010) (granting a
 20 temporary restraining order to enjoin a former employee from using a company's "confidential
 21 and/or trade secret employee compensation information").

22 **III. CONCLUSION**

23 For the foregoing reasons, Google respectfully requests that this Court order the above-
 24 referenced materials be placed under seal.

25

26

27

28

1 Dated: February 6, 2014

MAYER BROWN LLP

2 By: /s/ Anne M. Selin
3 Anne M. Selin

4 LEE H. RUBIN (Bar No. 141331)
5 lrubin@mayerbrown.com
6 EDWARD D. JOHNSON (Bar No. 189475)
7 wjohnson@mayerbrown.com
8 DONALD M. FALK (SBN 150256)
9 dfalk@mayerbrown.com
10 ANNE M. SELIN (SBN 270634)
11 aselin@mayerbrown.com
12 MAYER BROWN LLP
13 Two Palo Alto Square, Suite 300
14 Palo Alto, CA 94306-2112
15 Telephone: (650) 331-2000
16 Facsimile: (650) 331-2060

17
18 *Attorneys for Defendant Google Inc.*

19
20
21
22
23
24
25
26
27
28